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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

SUPERFUND ACCOUNTING SECTION

REGION V

IN THE MATTER OF:

NINTH AVENUE DUMP,
Gary, Indiana

Proceeding Under Section 122(g)(4)
of the Comprehensive Environmental
Response, Compensation, and Liability
Act of 1980, as amended, 42 U.S.C.
Section 9622(g)(4)

U.S. EPA Docket No.

V-W- '91 -G 083

ADMINISTRATIVE ORDER
ON CONSENT
DE -- MINIMIS
SETTLEMENT

The United States Environmental Protection Agency (EPA), the Indiana Department of Environmental Management (IDEM) and the Respondents agree to the making and entry of this Administrative Order on Consent ("Consent Order").

I. JURISDICTION

1. This Consent Order is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. Section 9601 et seq. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (January 29, 1987) and further delegated to the Regional Administrators of EPA by Delegation No. 14-14-E (September 13, 1987). This Consent Order is also issued pursuant

to the authority vested in IDEM by the Indiana Environmental Management Act, Ind. Code §13-7-1-1 et seq.

2. This Consent Order is issued to each person identified in Attachment A. The Respondents agree to consent to and not to contest the jurisdiction of EPA or IDEM to issue or enforce this Consent Order in any action taken to enforce this Consent Order. Each Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order.

II. DEFINITIONS

Whenever the following terms are used in this Consent Order or its attachments, the following definitions specified in this Paragraph shall apply:

1. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. Sections 9601 et seq., Pub. L. 99-499.

2. "EPA" means the United States Environmental Protection Agency.

3. "Facility" means the "Facility" as that term is defined at Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9), where treatment, storage or disposal of hazardous substances was conducted; which Facility is located at 7537 Ninth Avenue, Gary, Indiana, commonly known as the Ninth Avenue Dump, and may include areas outside the property boundary which may contain hazardous substances, including contaminated soil, sediments or groundwater due to the past operations at the site.

4. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

5. "IDEM" means the Indiana Department of Environmental Management.

6. "Phase I Operable Unit" as it applies to this Facility means the interim action described in EPA's Record of Decision signed by the Regional Administrator on September 20, 1988.

7. "Phase II Operable Unit" as it applies to this Facility means the remedial action described in EPA's Record of Decision signed by the Regional Administrator on June 30, 1989.

8. "Phase I Order" means the unilateral Administrative Order issued by the EPA on December 7, 1988.

9. "Phase II Order" shall mean the unilateral order issued by the EPA on August 17, 1989.

10. "Participants" mean those Respondents who are signatories to the Ninth Avenue Participation Agreement and the Ninth Avenue Site Trust Fund Agreement and who have paid in full their respective assessments pursuant to those Agreements;

11. "Non Participants" means those Respondents who have not executed the Ninth Avenue Participation Agreement.

12. "Parties" mean the EPA, IDEM and Respondents.

13. "Potentially Responsible Party" or "PRP" shall mean all persons, as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21), who have been defined by EPA as potentially liable to the United States or to other parties for payment of response costs or subject to injunctive relief under

Sections 104, 106 or 107 of CERCLA, 42 U.S.C. Sections 9604, 9606 and 9607.

14. "Respondents" means those parties other than the EPA or IDEM who sign this Consent Order and who are identified in Attachment A.

15. "Response Costs" means any past, present and future costs incurred by the United States of America, the State of Indiana, or other parties at the Facility pursuant to any of the provisions of 42 U.S.C. Section 9601 et seq., including, but not limited to, oversight and enforcement costs.

III. FINDINGS OF FACT

The EPA and IDEM make the following findings of fact, none of which are agreed to or admitted by the Respondents:

1. The Ninth Avenue Dump Site is located at 7537 Ninth Avenue, Gary, Indiana.

2. The Facility occupies approximately 17 acres of land in an area of mixed industrial, commercial and residential use. The Facility was operated as a waste storage site where the operator accepted liquid and dry waste material containing hazardous substances.

3. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), have been or are threatened to be released into the environment at or from the Facility.

4. The Facility was placed on the National Priorities List in 1983.

5. In early 1985, EPA performed a Remedial Investigation (RI) and Feasibility Study (FS) for the site. The RI was completed in June 1988. A Phased Feasibility Study (PFS), performed to evaluate remedial measures to clean the oil layer on groundwater located at the Facility, was completed in June 1988. A Final Feasibility Study (FFS), performed to evaluate possible remedial actions to complete cleanup of the remaining contamination at the Facility, was completed in January 1989.

6. EPA, pursuant to Section 106 of CERCLA, 42 U.S.C. Section 9606, determined that conditions at the Facility constituted an imminent and substantial danger to public health or welfare or to the environment. EPA therefore issued the Phase I order to approximately 185 PRPs on December 7, 1988 to perform the Phase I operable unit, or interim remedy, at the Facility. On January 13, 1989, approximately 75 PRPs agreed to perform the Phase I operable unit.

7. On March 20, 1989, the EPA provided the FFS and proposed plan for remedial action to the public for comment. The EPA selected a final remedy for Phase II remedial work at the site. This Phase II operable unit remedy is summarized in the Record of Decision signed by the Regional Administrator of the EPA, Region V, on June 30, 1989.

8. On August 17, 1989, the EPA issued the Phase II Order for the Phase II Operable Unit pursuant to Section 106 of CERCLA, 42 U.S.C. Section 9606, effective November 6, 1989, to approximately 186 PRPs. The Phase II Order required the named PRPs to perform

the Phase II operable unit in accordance with the terms of the Record of Decision signed on June 30, 1989.

9. As of the effective date of this Consent Order, the EPA and IDEM have estimated that they will have incurred approximately \$3,312,000 in documented past response costs, exclusive of interest. The Respondents and other PRPs may be liable for the payment of the unreimbursed past costs of the EPA and IDEM for the Facility.

10. EPA will continue to and IDEM may incur future response costs at or in connection with the Facility. Respondents and the PRPs may also be liable to EPA for these future response costs for the Facility including, but not limited to, actions required by the Phase I order. Respondents also may be liable for damages for injury to, destruction of, or loss of natural resources caused by hazardous substances released from the Facility pursuant to Section 107(f) of CERCLA, 42 U.S.C. Section 9607(f) and to the State of Indiana. Moreover, those Respondents who were Non Participants and other PRPs who did not comply with EPA's Phase I order may be liable for penalties or damages.

11. Information currently available to the EPA and IDEM indicates that each Respondent listed in Attachment A to this Consent Order arranged by contract, agreement or otherwise for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Facility, of hazardous substances owned or possessed by them, or accepted such

hazardous substances for transport for disposal or treatment at the Facility.

12. Information currently available to EPA and IDEM indicates that the amount of hazardous substances contributed to the Facility by each Respondent does not exceed 400,000 gallons or 1.2% of the hazardous substances contributed to the Facility and that the toxic or other hazardous effects of the substances contributed by each Respondent to the Facility do not contribute disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Facility. By executing this Consent Order, each Respondent has certified that it has fully disclosed all information known to it concerning the volume and nature of the hazardous substances it contributed to the Facility and that its volume of material sent to the Facility, if any, does not exceed 400,000 gallons.

13. In evaluating the settlement embodied in this Consent Order, EPA and IDEM have considered the potential cost of remediating contamination at or in connection with the Facility. Total projected response costs related to the Facility for the Phase I operable unit are estimated to be \$2,430,000 and are estimated to be \$22,209,000 for Phase II operable unit. According to EPA calculations, total projected EPA oversight costs for the Phase I operable unit are estimated to be \$364,500. Total projected EPA oversight costs for the Phase II operable unit are estimated to be \$3,331,350.

14. Total estimated Federal Natural Resource Damages related to the Facility are \$26,860.

15. The total amount expected to be paid by Respondents to EPA and IDEM pursuant to this Consent Order are, consistent with agency policy guidelines, a minor portion of the total response costs at the Facility.

16. The Participants have paid money into a Trust Fund for the purpose of funding completion of the Phase I operable unit. The EPA is informed and believes that some of the Participants may be entitled to a credit for their payments to the Ninth Avenue Site Trust Fund.

17. EPA and IDEM have identified persons other than the Respondents who owned or operated the Facility, or who arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of a hazardous substance owned or possessed by such person at the Facility, or who accepted a hazardous substance for transport to the Facility. EPA and IDEM have considered the nature of its case against these non-settling parties in evaluating the terms embodied in this Consent Order.

18. Pursuant to Section 122(g)(4) of CERCLA, this settlement requires the concurrence of the United States Department of Justice. This concurrence has been obtained, and notice of this settlement will be given to the public.

19. EPA and IDEM are informed and believe that some PRPs may decide to perform Phase II remedial work at the Facility in compliance with the Phase II Order.

IV. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of the Parties are:

- A. To reach a settlement with a large number of ~~de~~ the ~~minimis~~ parties in this case which allows them to settle their potential liability for response costs which have been or may be incurred at the Facility to the extent that these liabilities can be determined at this stage of the enforcement action, thereby avoiding difficult, prolonged and complicated litigation among EPA, the settling Respondents, and other PRPs not participating in this settlement; and
- B. For the Non Participant Respondents, to settle their potential liability for penalties for noncompliance with EPA's Phase I order; and
- C. To simplify subsequent negotiations or litigation concerning the Facility by eliminating a substantial number of parties from further involvement in the case, while raising revenues from settlements with the Respondents to be applied to the response costs associated with this Facility, raising revenue attributable to liability for noncompliance with the Phase I Order; and raising revenue to fund the Phase I operable unit and Phase II operable unit remedial work.

V. DETERMINATIONS

Based upon the Findings of Fact set forth above and on the administrative record for this Facility, EPA and IDEM make the determinations enumerated below none of which are agreed to or admitted by the Respondents:

1. The Ninth Avenue Dump is a "Facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9);
2. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21);
3. Each Respondent is a "potentially responsible party" (PRP) within the meaning of Sections 107(a) and 122(g)(1) of CERCLA, 42 U.S.C. Sections 9607(a) and 9622(g)(1);
4. The material shipped to the Facility contained "hazardous substances" within the meaning of Section 101(14) of CERCLA;
5. The past, present or future migration of hazardous substances from the Facility constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22);
6. The costs incurred to date by the EPA and IDEM and expected to be incurred in the future at the Facility are removal or remedial response costs within the meaning of § 107(1) of CERCLA;
7. Prompt settlement with the Respondents is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. Section 9622(g)(1);

8. Consistent with Agency guidance, this Consent Order involves only a minor portion of the total response costs at the Facility pursuant to Section 122(g)(1) of CERCLA, 42 U.S.C. Section 9622(g)(1);

9. The amount of hazardous substances contributed to the Facility by each Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Facility by each Respondent are minimal in comparison to other hazardous substances at the Facility, consistent with the requirements of Section 122(g)(1) of CERCLA, 42 U.S.C. Section 9622(g)(1);

10. It is appropriate that each Respondent, complying with the terms of Section VI(A) of this Order, shall receive a Covenant not to Sue from the United States and the State of Indiana.

11. It is appropriate that each Respondent, complying with the terms of Section VI(A) of this Order, shall receive contribution protection against claims of all other PRPs, consistent with the provisions of Section 122(g)(5) of CERCLA, 42 U.S.C. Section 9622(g)(5).

VI. ORDER

Based upon the Administrative Record for this Facility and the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth in this Consent Decree, it is AGREED TO AND ORDERED:

A. PAYMENT

1. Within 30 days of the effective date of this Consent Order, each Respondent shall pay to the Hazardous Substance Superfund, and the EPA has agreed to accept, the amount set forth in Attachment B. The purpose of this payment for all Respondents is to reimburse the Hazardous Substance Superfund the response costs expended at the Facility. The payment represents each Respondent's proportional volumetric share of the response cost of \$3,312,000.

2. Within 30 days of the effective date of this Consent Order, each Respondent shall pay to the Office of the Secretary of the Interior, and the United States Department of Interior (DOI) has agreed to accept the amount set forth in Attachment C. The purpose of this payment for all Respondents is to reimburse the DOI for estimated natural resource damage. The payment shall total \$26,860.

3. Within 60 days of the effective date of this Consent Order, each Respondent shall pay to the Ninth Avenue Phase II Escrow Account, which account will be established in accordance with the terms of Section VI C, the amount set forth in Attachment D. The purpose of this payment is to establish a pool

of funds to be used to implement the Phase II operable unit. For each Participant the payment represents the Participant's volumetric share of the combined base cost of \$22,209,000 to conduct the Phase II operable unit and \$2,430,000 to conduct the Phase I operable unit multiplied by a factor of 2.8 to serve as a premium less a credit in the amount of the Participant's prior payment to the Ninth Avenue Site Trust Fund which Trust Fund money is to be used to perform the Phase I operable unit. For each Non-Participant the payment represents the Non-Participant's volumetric share of the base cost of \$22,209,000 to conduct the Phase II operable unit multiplied by a factor of 2.8 to serve as a premium. The premium is designed to pay for cost overruns during implementation of the remedy and for supplemental remedies or additional work to be performed in the event the EPA determines the implemented remedy is not protective of public health and the environment.

4. Within 60 days of the effective date of this Consent Order, each Non-Participant shall pay to the Ninth Avenue Phase I Escrow Account, which account will be established in accordance with the terms of Section VI D, the amount set forth in Attachment E. The purpose of this payment is to establish a pool of funds from Non-Participants to the Phase I order to be used to implement the Phase I operable unit. This payment represents each Non Participant's volumetric share of the base cost of \$2,430,000 to conduct the Phase I operable unit multiplied by a factor of 2.8 to serve as a premium. The premium is designed to

pay for cost overruns, unforeseen contingencies, and data uncertainties.

5. Within 60 days of the effective date of this Consent Order, each Non-Participant who was included on the list of recipients of the Phase I Order shall pay to the Hazardous Substances Superfund the amount set forth in Attachment F. This sum represents a penalty payment for non-compliance with the Phase I order. The payment represents each Non-Participant's volumetric share of the base cost of \$2,430,000 to perform the Phase I operable unit multiplied by a factor of 1 to serve as a penalty.

6. The payment reflected in Section VI(A)³ reflects a credit to Participants in the Phase I order in the amount of their prior payment and any payments owed to the Ninth Avenue Site Trust Fund. As to those Participants whose payments due and owing to the Phase II Escrow Account exceeds the amount paid to the Ninth Avenue Site Trust Fund, such Participant shall pay the full amount of any refund received from the Phase I Trust Fund to the Hazardous Substance Superfund. As to those Participants whose payment due and owing to the Phase II Escrow Account is less than the amount paid to the Phase I Trust Fund, such Participant shall pay to the Hazardous Substances Superfund that portion of the received refund which exceeds the difference between the payment to the Ninth Avenue Site Trust Fund and the amount due and owing the Phase II Escrow Account.

7. Within 30 days of the effective date of this Consent Order, each Respondent shall pay into the Hazardous Substance Superfund and the EPA has agreed to accept the amount set forth in Attachment G. The purpose of this payment for all Respondents is to pay into the Hazardous Substances Superfund EPA's estimated oversight costs for the Phase I operable unit. The payment represents each Respondent's proportional volumetric share of the estimated Phase I oversight cost of \$364,500 multiplied by a factor of 2.8 to serve as a premium.

8. Within 30 days of EPA's receipt of any notification of intention of any private person to fully comply with the Phase II Order and perform the Phase II operable unit, each Respondent shall pay into the Hazardous Substance Superfund and the EPA has agreed to accept the amount set forth in Attachment H. The purpose of this payment for all Respondents is to pay into the Hazardous Substances Superfund EPA's estimated oversight costs for the Phase II operable unit. The payment represents each Respondent's proportional volumetric share of the estimated Phase II oversight cost of \$3,331,350 multiplied by a factor of 2.8 to serve as a premium.

9. Each payment shall be made by certified or cashier's check and shall identify the site name, the name and address of the Respondent, and the EPA docket number for this action. Payments to the "Ninth Avenue Phase II Escrow Account;" shall be sent to (name and address of Agent); payments to the "Ninth

Avenue Phase I Escrow Account;" shall be sent to (name and address of Agent); payments to the EPA shall be sent to:

EPA Region V
Attn: Superfund Accounting
Post Office Box 70753
Chicago, Illinois 60673

Payments to the IDEM shall be sent to:

Indiana Hazardous Substances Trust Fund
Indiana Department of Environmental Management
Attn: Cashier
Office of the Comptroller
105 South Meridian Street
Indianapolis, Indiana 46206-6015

Each Respondent shall simultaneously send a copy of its check to:

Mary Butler
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region V (5CS-TUB-3)
230 South Dearborn Street
Chicago, Illinois 60604

David Ullrich
Director, Waste Management Division
U.S. Environmental Protection Agency
Region V (5HS)
230 South Dearborn Street
Chicago, Illinois 60604

B. NINTH AVENUE ADMINISTRATIVE FUND

Within 90 days of the effective date of this Consent Order, the Respondents shall open with an Escrow Agent, an escrow account entitled "Ninth Avenue Administrative Fund" in which each Respondent shall deposit the sum of \$500. Such funds will be used to reimburse joint administrative efforts on behalf of Respondents which expenses are telephone calls, reproduction costs, courier or

facsimile transmission costs, postage, and customary reasonable time charges for legal assistants used to generate and compile mailing lists and spreadsheets. Legal fees will not be reimbursed by the Administrative Fund.

C. NINTH AVENUE PHASE II ESCROW ACCOUNT

Within 45 days of the effective date of this Consent Order, all Respondents shall establish an escrow account entitled "Ninth Avenue Phase II Escrow Account" with an Escrow Agent acceptable to EPA. Such escrow account will be opened in accordance with the terms set forth in Attachment I and will specify that funds deposited into the account will be used only for the purpose of reimbursing the costs of any private person who agrees to comply with the Phase II Order and performs work required for the Phase II operable unit, except as provided below. Distribution of funds from the account shall represent the payment of each Respondent's share of the costs for such work. The EPA shall be required to approve requests for distribution of funds from the account, with such approval not to be unreasonably withheld. EPA shall allow distribution of funds from the account to private parties as follows: sixty percent of the amount collected shall be available at the onset of remedial action; fifteen percent of the amount collected shall be available upon EPA's certification of satisfactory completion of the remedial action; twenty five percent shall be held in reserve for use in the event of remedial action failure or if EPA later determines that additional work is needed because the remedy is not protective of human health and

the environment, or it shall be placed into the Hazardous Substances Superfund. Such funds shall not be used to remedy problems resulting from poor construction practices. All disbursement decisions shall be entirely at EPA's discretion. In the event that no private person agrees to undertake the Phase II operable unit, or the EPA determines that private parties are not in satisfactory compliance with the Phase II Order, and the EPA commences the performance of work set forth in the Record of Decision, then the money contained in the Ninth Avenue Phase II Escrow Account shall be paid as follows: 95% shall be paid to the Hazardous Substance Superfund to pay for design, construction and the first ten years of operation and maintenance, and 5% shall be paid to the Indiana Hazardous Substances Trust Fund to cover estimated future operation and maintenance costs after the tenth year; as each Respondent's share of the cost of such work. In the event that the cost of completion of the work is less than that specified in Section VI(A) of this Consent Order, such remaining funds will be paid to the Hazardous Substance Superfund.

D. NINTH AVENUE PHASE I ESCROW ACCOUNT

Within 45 days after the effective date of the Consent Order, non-Participants who are Respondents shall establish an escrow account entitled "Ninth Avenue Phase I Escrow Account" with an Escrow Agent acceptable to the EPA. Such escrow account will specify that the deposited funds will be opened in accordance with the terms set forth in Attachment J and shall be used for

the purpose of reimbursing the costs of any private person or persons who agree to comply with the Phase I Order and perform the Phase I operable unit. The EPA shall approve reasonable requests for dispersal of funds from this account. The EPA shall hold one fourth of the account in reserve, which shall be payable upon satisfactory completion of the Phase I work. In the event that no private person agrees to undertake the Phase I operable unit or the EPA is required to engage all or part of that work or in the event that all money in the Ninth Avenue Phase I Escrow Account is not used, then the remaining money contained in the Escrow Account shall be paid to the Hazardous Substance Superfund.

E. CIVIL PENALTIES

In addition to any other remedies or sanctions available to EPA, any Respondent who fails or refuses to comply with any term or condition of this Consent Order shall be subject to a civil penalty of up to \$25,000 per day of such failure or refusal, pursuant to Section 122(1) of CERCLA, 42 U. S. C. Section 9622(1).

F. CERTIFICATION OF RESPONDENTS

Each Respondent certifies that, to the best of its knowledge and belief, after reasonable inquiry, it has provided to the EPA all records currently in its possession, or in the possession of its officers, directors, or employees which relate to the generation, treatment, transportation, or disposal of hazardous substances delivered by it to the Facility or to another for

transport to the Facility. Each Respondent further certifies that its records do not indicate having sent more than the volume attributed to it as set forth in Attachment A.

G. GOVERNMENT NOT TO SUE

1. Subject to the reservations of rights in Section VI (H) of this Consent Order, upon payment of the amounts specified in Section VI (A), the United States of America ("United States") and the State of Indiana ("the State") covenant not to sue or to take any other civil judicial or administrative action against any of the Respondents for "Covered Matters."

2. "Covered Matters" shall include any and all alleged civil liability:

- a) for reimbursement of Response Costs and costs or other items of monetary relief contemplated as recoverable under by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. Sections 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. Section 6973, with regard to the Facility, or available to the State under Indiana Code 13-7-8.7;
- b) for damages to natural resources of which the United States is trustee;
- c) for injunctive relief, pursuant to Section 106 and 107(a) of CERCLA, 42 U.S.C. Sections 9606 or

9607(a), or Section 7003 of RCRA, 42 U.S.C. Section 6973, with regard to the Facility.

3. With respect to those Respondents named in EPA's Phase I Order who have not timely complied with that order in this proceeding, "Covered Matters" shall also include any potential liability for penalties or damages for noncompliance with that order or for injunctive relief, pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b).

4. In consideration of the covenant not to sue in this Section VI Paragraph G, the Respondents covenant not to sue or assert any claims or causes of action under Section 106(b) of CERCLA, 42 U.S.C. 9606(b), against the United States, or the Hazardous Substance Superfund arising out of Covered Matters, or to seek any other costs, damages, or attorney's fees from the United States, or the State, arising out of response activities at the Facility.

5. In consideration of the covenant not to sue, the Respondents covenant not to sue or assert claims or causes of action against one another, or to seek costs, damages or attorney's fees from one another for any matters arising from Phase I or Phase II operable units or for any action taken to comply with the Phase I or Phase II Orders. The Respondents further agree that nothing in the Consent Order is intended as a release or covenant not to sue for any judicial, civil or criminal action, whether past or future, in law or in equity, which each may have against any person, firm, corporation, or

entity not a signatory to this Consent Order; except that the Respondents covenant not to sue or assert claims or causes of action against any person, or to seek costs, damages or attorney's fees from any person who agrees to perform Phase I or Phase II operable units, accepts money from the Ninth Avenue Phase I or Phase II Escrow Accounts and explicitly, implicitly or by action of law agrees not to assert claims, cause of actions, costs, damages or attorney's fees from the Respondents for any matter arising out of the Phase I or Phase II operable unit or the Phase I or Phase II orders.

H. RESERVATION OF RIGHTS

1. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, at law or in equity, which the United States, including EPA, or the State, including IDEM, may have against any of the Respondents for:

- (a) any liability as a result of failure to make the payment required by Section VI(A) of this Consent Order; or
- (b) any matters not expressly included in Covered Matters.

2. Nothing in this Consent Order is intended to limit the ability of the United States, including EPA, or the State, including IDEM, to seek or obtain further relief from any Respondent hereto, and the covenant not to sue in Section VI(G)

of this Consent Order is null and void with respect to any Respondent, if:

- (a) information not currently known to EPA is discovered which indicates that such Respondent contributed hazardous substances to the Facility in such greater amount or of such greater toxic or other hazardous effects as to not qualify, in the determination of EPA, as a ~~de minimis~~ party for the Facility because the Respondent contributed hazardous substances to the Facility in amounts significantly in excess of those to which it has certified herein, as reflected in Attachment A, or is responsible for hazardous substances which contributed disproportionately beyond the character of such substances known by EPA prior to the execution of this Consent Order, to the cumulative toxic or other hazardous effects of the hazardous substances at the Facility;
- (b) such Respondent fails or refuses to make the payments required in Section VI(A) above.

3. In the event that information not currently known to the EPA is discovered which indicates that any Respondent contributed greater than 400,000 gallons of waste to the Facility such that the Respondent no longer qualifies as a ~~de minimis~~ party and the covenant not to sue provided in Section VI(G) no longer applies, such Respondent shall not be liable for imposition of fines or penalties arising out of the Phase I or II Order and money paid

by or credited to such party for payment pursuant to Paragraph A of Section VI shall be credited toward any amount ultimately adjudged or determined to be owing by such party.

4. Nothing in this Consent Order is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the parties, including EPA, or IDEM, may have against any person, firm, corporation or other entity not a signatory to this Consent Order.

5. Payments made pursuant to Section VI of this Consent Order are made in good faith to settle and resolve uncertain potential liabilities. With the exception of payments made pursuant to Section VI(A)(5), these payments are not and do not constitute the imposition of penalties, fines, or monetary sanctions of any kind. EPA, IDEM and the Respondents agree that the actions undertaken by the Respondents in accordance with this Consent Order do not constitute an admission of any liability. The Respondents do not admit, and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the Findings of Fact or Determinations or assessments of waste volume contained in this Consent Order.

I. CONTRIBUTION PROTECTION

Subject to the reservations of rights in Section VI, Paragraph H of this Consent Order, EPA agrees that by entering into and carrying out the terms of this Consent Order each Respondent will

have resolved its liability to the United States for Covered Matters pursuant to Section 122(g)(5) of CERCLA, 42 U.S.C. Section 9622(g)(5), and shall not be liable for claims by non-respondents for contribution for Covered Matters as provided by Sections 122 and 113 of CERCLA, 42 U.S.C. Sections 9622 and 9613. Without admitting any liability, the parties believe that this settlement represents these Respondents' fair settlement share of, and provides an equitable apportionment of, their entire potential liability for the Facility.

J. COMPLIANCE WITH ORDERS

Subject to the reservations contained in Section VI (H), upon completion of the payments specified in Section VI(A) of this Consent Order, the EPA and Respondents agree that they have fully complied with the Phase I and Phase II orders.

K. PARTIES BOUND

This Consent Order shall apply to and be binding upon the Respondents and their directors, officers, employees, agents, successors and assigns. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind legally the Respondent represented by him or her.

L. PUBLIC COMMENT

This Consent Order shall be subject to a thirty day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. Section 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. Section 9622(i)(3), EPA may withdraw its consent to

this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate.

M. ATTORNEY GENERAL APPROVAL

The Attorney General or his designee has issued prior written approval of the Settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA, 42, U.S.C. Section 9622(b)(4). A copy of that approval is attached and incorporated into the Consent Order by reference.

M. EFFECTIVE DATE

The effective date of this Consent Order shall be the date upon which EPA issues written notice to the Respondents that the public comment period pursuant to Section VI, Paragraph L, of this Consent Order has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

Administrative Order on Consent
Ninth Avenue Dump ~~De~~ Minimis Settlement

IT IS SO ORDERED

U.S. Environmental Protection Agency
Region V

By: _____


Valdas V. Adamkus
Regional Administrator

1/30/91.
Date

By: Kathy Prosser
Kathy Prosser, Commissioner
Indiana Department of Environmental Management

1-12-91
Date

By: [Signature]
Office of the Governor
State of Indiana

1/28/91
Date

APPROVED FOR LEGALITY AND FORM

By: Harry John Watson III
Harry John Watson III
Deputy Attorney General
Attorney General's Office

1-22-91
Date

1-28-91
1-28-91